

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Access Charge Tariff Filings Introducing Broadband-only Loop Service	)	WC Docket No. 16-317
	)	

**ORDER**

**Adopted: December 14, 2016**

**Released: December 14, 2016**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In the *Rate-of-Return Reform Order*, the Commission adopted significant reforms to the rules governing incumbent local exchange carriers that currently receive high-cost support through the legacy high-cost support mechanisms (rate-of-return LECs), including the adoption of a new Connect America Fund Broadband Loop Support (CAF BLS) mechanism and a voluntary path to model-based support for those rate-of-return carriers (also known as the Alternative Connect America Cost Model, or A-CAM).<sup>1</sup> With this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a waiver of sections 69.311 and 69.416 of the Commission's rules to limit the costs that must be shifted from the Special Access category to the Consumer Broadband-only Loop category in certain specific circumstances, as described below.<sup>2</sup>

**II. BACKGROUND**

2. In the *Rate-of-Return Reform Order*, the Commission adopted significant reforms to the rules governing the provision of universal service support to rate-of-return LECs.<sup>3</sup> The Commission adopted a voluntary path under which rate-of-return carriers may elect model-based support for a term of 10 years in exchange for meeting defined build-out obligations.<sup>4</sup> For carriers not electing model-based support, the Commission modernized the existing interstate common line support (ICLS) rules to provide

<sup>1</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Order*).

<sup>2</sup> 47 CFR §§ 69.311, 69.416.

<sup>3</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3089, para.1.

<sup>4</sup> See *id.* at 3094-117, paras. 17-79.

support in situations where the customer no longer subscribes to traditional regulated local exchange voice service, i.e., subscribes to stand-alone broadband.<sup>5</sup>

3. To implement these reforms, the Commission, among other things, revised certain cost allocation and tariffing rules for carriers to introduce supported Consumer Broadband-only Loop services.<sup>6</sup> Specifically, the Commission revised Part 69 of the Commission's rules to require rate-of-return carriers to move the costs of consumer broadband-only loops from the Special Access category to the new Consumer Broadband-Only Loop category.<sup>7</sup> Because the costs of the facilities associated with the common line and the consumer broadband loop are very similar, the Commission developed a method for determining the cost of a Consumer Broadband-only Loop using Common Line costs as a surrogate. Under this methodology, rate-of-return carriers use a 100 percent allocation of the Common Line costs to the interstate jurisdiction to identify the costs that must be moved from the Special Access category to the Consumer Broadband-only Loop category. In doing so, the Commission intended to segregate the broadband-only loop investment and expenses from other special access costs currently included in the Special Access category<sup>8</sup> and also preclude cross-subsidization.<sup>9</sup> The Commission indicated that it would monitor implementation of this requirement to ensure that the rules are working as intended.<sup>10</sup>

### III. DISCUSSION

4. Generally, the Commission's rules may be waived under section 1.3 of our rules for "good cause shown."<sup>11</sup> The Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant a deviation from the general rule; and (c) such deviation will serve the public interest.<sup>12</sup> In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.<sup>13</sup>

5. It has come to our attention that, in certain limited situations, the surrogate cost methodology over-allocates costs out of the Special Access category, thereby reducing the revenue requirement and resulting special access rates more than intended and, in the worst case scenario, to zero. Such special access rates would likely be unreasonably low until the Commission revisits the allocation methodology and, when the costs in the Special Access category rise, there would be a consequent spike in special access rates. This outcome strongly suggests that it would be unreasonable to apply the surrogate in these limited circumstances. For the reasons discussed below, we find that good cause exists to grant a limited waiver of the rules requiring rate-of-return carriers to use the surrogate cost methodology for the December 2016 tariff filings<sup>14</sup> when the special circumstances described below are present.

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<sup>5</sup> See *id.* at 3117-57, paras. 80-187.

<sup>6</sup> See *id.* at 3157-62, paras. 188-204.

<sup>7</sup> *Id.* at 3158-59, para. 191.

<sup>8</sup> The costs remaining in the special access category include those related to business services, such as DS1 and DS3 other wide-band services, and the costs for Digital Subscriber Line (DSL) service that could be tariffed.

<sup>9</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3158-59, para. 191.

<sup>10</sup> *Id.* at 3158-59, para. 191.

<sup>11</sup> 47 CFR § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>12</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>14</sup> See *Access Charge Tariff Filings Introducing Broadband-only Loop Service*, Order, Docket No. 16-317, 33 FCC Rcd 11017 (WCB Oct. 6, 2016).

6. Use of the surrogate cost methodology in a way that significantly affects non-Digital Subscriber Line (DSL) special access rates would be inconsistent with the public interest because it would introduce distortive pricing effects unrelated to the provisioning of broadband services and would be inconsistent with the goal of just and reasonable rates and rate stability over time. Thus, we conclude that the policy underlying the Commission's rule would be better served by waiver than by strict application of the rule. Accordingly, as an exercise of the Bureau's delegated authority, we hereby waive sections 69.311 and 69.416 of the rules in cases where use of the surrogate cost methodology would result in unintended rate reductions. Specifically, this limited waiver will apply in circumstances in which subtraction of surrogate consumer broadband-only loop costs (as defined in Part 69) from a carrier's Special Access category would result in the need to reduce the carrier's special access rates other than broadband transmission rates associated with provision of retail broadband Internet access service. In such cases, the carrier will have the option to limit the level of costs subtracted from the Special Access category to the amount only affecting those broadband transmission rates, pending further consideration of current surrogate cost estimation rules. As a condition of this waiver, we require carriers electing this option to limit their Consumer Broadband-only Loop revenue requirement reported to Universal Service Administrative Company (USAC) for CAF BLS purposes to this amount. As noted above, this waiver applies only to the December 2016 tariff filings.

#### **IV. ORDERING CLAUSES**

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 5, 201-202, 251, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 155, 201-202, 251, 254, and sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and pursuant to the delegation of authority in footnote 413 of the *Rate-of-Return Reform Order*, sections 69.311(b) and 69.416(b) of the Commission's rules, 47 CFR §§ 69.311(b), 69.416(b), are WAIVED to the extent and under the specific circumstances specified herein.

8. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), that the Order SHALL BE EFFECTIVE upon RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief, Wireline Competition Bureau